

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

BANKOLE OLABODE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 00-573-SLR
)	
UNITED STATES SECRET SERVICE,)	
AGENT RICHARD P. BROWN, AGENT)	
ROBERT MACPHERSON, SIX (6))	
UNIDENTIFIED SECRET SERVICE)	
AGENTS and UNITED STATES OF)	
AMERICA,)	
)	
Defendants.)	

MEMORANDUM ORDER

I. INTRODUCTION

Plaintiff Bankole Olabode filed this action on June 14, 2000 against defendants United States Secret Service ("Secret Service"), Agent Richard P. Brown ("Agent Brown"), Agent Robert MacPherson ("Agent MacPherson") and six unidentified Secret Service agents, alleging violations of his constitutional rights under Bivens, the Federal Torts Claims Act ("FTCA"), and 42 U.S.C. §§ 1985(3), 1986 and 1988. (D.I. 1) The court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1346(b). Currently before the court is defendants' motion for summary judgment. (D.I. 44) For the following reasons, defendants' motion is granted in part and denied in part.

II. BACKGROUND

On June 24, 1998, Ilori Olabode, plaintiff's brother and roommate, was indicted by a federal grand jury in the Eastern District of Pennsylvania. (D.I. 46 at A-1) The United States Secret Service asked its Wilmington office to assist in apprehending Ilori Olabode at his Wilmington, Delaware address. (Id.) Coincidentally, a "sweep" involving several state and federal law enforcement agencies was scheduled in Wilmington for the following day in order to execute approximately 150 outstanding warrants. (Id. at A-2-A-5; D.I. 45, Ex. 1) Assigned to "Team 5" of the sweep were Agent MacPherson and several other officers and agents. (D.I. 45, Ex. 1) The first warrant that Team 5 executed that morning was for Ilori Olabode, who was arrested at his apartment without incident and transported to the Secret Service office in Wilmington for processing. (D.I. 46 at A-6)

Around the time that Ilori Olabode was transported away, plaintiff drove into the parking lot outside his apartment building where some of the members of Team 5 had gathered. (D.I. 46 at A-8) One of the officers noticed that plaintiff bore a resemblance to a photograph of one of Ilori Olabode's co-defendants for whom they had a warrant. (Id.) According to plaintiff's complaint, plaintiff was then "rushed by

several men wearing para-military garb with guns drawn," and without identifying themselves, they told plaintiff that "he was under arrest." (D.I. 1 at ¶11-13) Plaintiff further alleges that, in response to his repeated attempts to ascertain what was happening, he was told to "shut up" and that he "looked like someone they were looking for." (Id. at ¶14-15) When plaintiff attempted to reach for his identification, he claims that he was pushed against his vehicle by the officers, causing him to "strike his chest and shoulder." (Id. at ¶16-17) Meanwhile, the agents removed plaintiff's wallet and allegedly told him that "he would be deported back to Africa." (Id.) Plaintiff's hands were then placed behind his back in a "malicious manner" while one of the agents squeezed plaintiff's hand, causing him to "cry and scream in agony." (Id. at ¶18-19) Plaintiff claims that another agent grabbed a knife and cut his boots, and then he was handcuffed and violently forced into a vehicle, causing him to strike his head against the bottom of the car door. (Id. at ¶20-23) Plaintiff alleges that the agents drove him around "slowly" for approximately thirty minutes before arriving at the Secret Service office in Wilmington, even though he was screaming in pain from the tight handcuffs. (Id. at ¶25) Throughout the incident, because the agents

allegedly did not identify themselves, plaintiff thought he was being kidnapped.¹ (Id. at ¶22-24)

Upon entering the Wilmington office, the agents handcuffed plaintiff to a chair in a room, and allegedly told him that "he would be deported, that his I.D. was fake, and that he was the person the agents had been looking for, for a long time." (Id. at ¶26-29) Plaintiff further claims that the officers contacted plaintiff's place of employment and "alluded to his criminal involvement," which ultimately caused him to be dismissed from his job. (Id. at ¶28, ¶30) After enduring approximately four hours of alleged harassment, threats and insults, plaintiff was released from custody when an immigration official informed the agents that plaintiff was not under suspicion.² (Id. at ¶31-32)

¹Two witnesses to the incident, plaintiff's neighbor, Barbara Gilfillan, and plaintiff's apartment manager, Jenny Kincaid, testified that they noticed the words, "Postal Police" on the agent's uniforms. Neither saw any weapons drawn, nor heard any screaming or yelling, although Ms. Gilfillan noted that the officers were forceful with plaintiff. (D.I. 45 at A20-A22, A26-A34)

²Agent Brown, the Resident Agent in Charge of the Wilmington office, claims that plaintiff entered the office without handcuffs and asked to see his brother. Agent Brown asked plaintiff for any identification and his green card, but plaintiff did not have either, nor could he identify anyone to bring that information to the office. Agent Brown then allegedly told plaintiff that he would be detained until his legal status was confirmed. (D.I. 45 at A35-A38)

III. STANDARD OF REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere

existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

A. Section 1985(3), 1986 and 1988 Claims

A plaintiff claiming violations of his civil rights under 42 U.S.C. §§ 1985(3), 1986 and 1988 must demonstrate that the alleged deprivations were committed by those acting under color of state law. See Lloyd v. Jefferson, 53 F. Supp.2d 643, 655 (D. Del. 1999). Because defendants are members of the United States Secret Service and were executing a federal arrest warrant pursuant to a federal indictment, they were not acting "under color of state law." Therefore, defendants' motion for summary judgment is granted with respect to plaintiff's claims pursuant to Sections 1985(3), 1986 and 1988.

B. Claim Under the Federal Tort Claims Act

Constitutional tort claims are not actionable under the FTCA. See FDIC v. Meyer, 510 U.S. 471, 478 (1994). Thus, because the court finds that there are genuine issues of material fact as to plaintiff's allegations of assault, false arrest and false imprisonment under the FTCA, the court denies defendant's motion for summary judgment as to those claims,

but grants summary judgment in favor of defendants as to all other allegations under the FTCA.³

C. Bivens Claims

The court finds that there are genuine issues of material fact as to plaintiff's Bivens claims alleging constitutional torts. Therefore, the court shall deny defendants' motion for summary judgment as to those claims.

Regarding plaintiff's Bivens claims that Agents MacPherson and Brown were responsible for creating and maintaining racially-motivated policies, plaintiff has presented no persuasive evidence supporting his allegations. Because the court finds that there are no genuine issues of material fact as to these Bivens claims, the court shall grant summary judgment as to these claims in favor of defendants.

V. CONCLUSION

At Wilmington, this 14th day of September, 2001;

IT IS ORDERED that defendants' motion for summary judgment (D.I. 44) is: (1) granted with respect to plaintiff's Section 1985(3), 1986 and 1988 claims; (2) denied as to plaintiff's allegations of assault, false arrest and

³The court notes that pursuant to a stipulation submitted by the parties and signed by the court on August 9, 2001, the United States of America has been substituted as the defendant on plaintiff's FTCA claim. (D.I. 51)

false imprisonment under the FTCA, and granted as to all other allegations under the FTCA; and (3) denied as to plaintiff's Bivens claims alleging constitutional torts and granted as to plaintiff's Bivens claims alleging racially-motivated policies.

United States District Judge